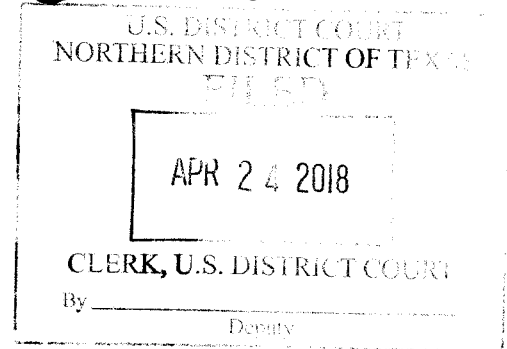


Jerry J. Jarzombek  
301 Commerce Street, Suite 2900  
Fort Worth, Texas 76102  
817-348-8325  
817-348-8328 Facsimile  
jerryjj@airmail.net



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

CYNTHIA BACY,

Plaintiff,

vs.

MIDLAND FUNDING, LLC,

Defendant.

Civil Action No.

**4-18 CV-310-A**

**COMPLAINT**

**and**

**DEMAND FOR JURY TRIAL**

(Unlawful Debt Collection Practices)

**Preliminary Statement**

1. Plaintiff, Cynthia Bacy ("Bacy") brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), as well as under the Texas Debt Collection Act, Tex. Finance Code § 392.001, *et seq.* ("TDCA") and the Texas Deceptive Trade Practices Act, Subchapter E, Chapter 17, Business & Commerce Code ("DTPA"), to obtain statutory damages, actual damages, injunctive relief, declaratory relief, and other relief for the Defendant's violations of the FDCPA, the TDCA and the DTPA.

2. Defendant, Midland Funding, LLC (“Midland”) attempted to collect a consumer debt allegedly owed by Plaintiff, arising from a purported obligation to Synchrony Bank. The obligation (“Debt”) required Plaintiff to pay money arising out of transactions in which money, property, insurance or services were the subject thereof, and the same were primarily for personal, family, or household purposes. Specifically, the alleged debt arose from an alleged default of a credit card, which was used by the Plaintiff for non-business purposes. Midland claims to have acquired the Debt after default solely for the purposes of collection.

### **Jurisdiction and Venue**

3. Jurisdiction of this Court attains pursuant to 15 U.S.C. § 1692k(d), 28 U.S.C. §§ 1331 and 1337(a), and the doctrine of supplemental jurisdiction for the TDCA claims pursuant to 28 U.S.C. § 1367.

4. Venue in the Northern District of Texas is proper under 28 U.S.C. § 1391(b)-(c) and because the acts and transactions occurred here and the Defendant transacts business here.

### **Parties**

5. Plaintiff is a citizen of the State of Texas. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3) and TEX. FIN. CODE § 392.001(1).

6. Midland is an entity engaged in the business of collecting consumer debts in the Northern District of Texas. The principal purpose of Midland’s business is the collection of consumer debts which it has acquired, after default. Midland does not extend credit to any of the consumers whose debt it acquires. Rather, the sole purpose of the acquisition of these defaulted debts is their collection, for profit. Midland is a “debt collector” as defined by 15 U.S.C. § 1692a(6)

and TEX. FIN. CODE § 392.001(6). Midland is also a “third-party debt collector” as defined by TEX. FIN. CODE § 392.001(7).

### **Factual Allegations**

7. On or about April 3, 2017, Midland filed suit in the Justice Court, Precinct 4, of Tarrant County, Texas under Cause No. JP04-17-DC00004397, styled *Midland Funding, LLC v. Cynthia Bacy* (the “State Court Case”). Plaintiff was served with the State Court Case on April 25, 2017.

8. As to the parties and the Debt, the Justice Court, Precinct 4 of Tarrant County, Texas is not the Plaintiff’s 15 U.S.C. § 1692i “district.” The Plaintiff was not a resident of Precinct 4 of Tarrant County, Texas at the time that the State Court Case was filed. Moreover, the Plaintiff signed no contract with Synchrony Bank in Precinct 4 of Tarrant County, Texas.

9. The relevant “judicial district or similar legal entity” is the smallest geographic unit relevant for venue purposes in the court system in which the case was filed, regardless of the source of the venue rules. *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 638 (7th Cir. 2014); *Hess v. Cohen & Slamowitz LLP*, 637 F.3d 117, 123-24 (2d Cir. 2011). Venue must be laid in the state judicial unit that has jurisdiction over the claim, if that unit is smaller than a county. *Nichols v. Byrd*, 435 F.Supp.2d 1101 (D.Nev. 2006).

10. A Motion to Transfer Venue was filed in the State Court Case, seeking to transfer venue to the Justice Court, Precinct 8 of Tarrant County, Texas. Midland non-suited the State Court Case before a ruling on the venue motion. Plaintiff incurred attorney’s fees in preparation and filing the Motion to Transfer Venue, due to Defendant’s filing the State Court Case in an improper venue.

11. The foregoing acts and omissions were undertaken on behalf of the Defendant by their respective officers, agents or employees, acting at all times relevant hereto within the scope of that relationship.

12. The foregoing acts and omissions of the Defendant were undertaken willfully, intentionally, knowingly, and/or in gross disregard for the rights of the Plaintiff.

13. The foregoing acts and omissions of the Defendant were undertaken indiscriminately and persistently, as part of their regular and routine collection efforts, and without regard to or consideration of the rights of the Plaintiff.

#### **First Claim for Relief**

14. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs. The Defendant's violations of the FDCPA include, but are not limited to the a. following:

- a. In violation of 15 U.S.C. § 1692d, the Defendant engaged in conduct the natural consequence of which was to harass, oppress, or abuse a person in connection with the collection of a debt, which conduct included filing suit in violation of TEX. R. CIV. P. 502.4(b) and TEX. CIV. PRAC. & REM. CODE § 15.092(c).
- b. In violation of 15 U.S.C. § 1692e(2)(a), 15 U.S.C. § 1692e(10) and the "least sophisticated consumer standard", the Defendant used objectively false representations and/or false, deceptive or misleading representations or means in connection with the collection of a consumer debt.
- c. In violation of 15 U.S.C. § 1692(e)(5) and the "least sophisticated consumer" standard, the Defendant threatened to take an action (and actually took such an action) which cannot legally be taken or that is not intended to be taken.
- d. In violation of 15 U.S.C. § 1692f, the Defendant used unfair or unconscionable means to collect or attempt to collect a consumer debt, which conduct included filing suit in violation of TEX. R. CIV. P. 502.4(b) and TEX. CIV. PRAC. & REM. CODE § 15.092(c).

- e. In violation of 15 U.S.C. § 1692i, the Defendants filed the State Court Case in Precinct 5 of Tarrant County, Texas which is a judicial district other than the one in which the Consumer signed a contract sued upon, or in which the Consumer resided at the commencement of the action.

15. Under 15 USC § 1692k, the Defendant's violations of the FDCPA render it liable to Plaintiff for statutory damages, actual damages, costs, and reasonable attorney's fees.

### **Second Claim for Relief**

16. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs. The Defendant's violations of the TDCA include, but are not limited to the following:

- a. In violation of TEX. FIN. CODE § 392.301(a)(8), Defendant threatened to take (and/or did take) an action prohibited by law.
- b. In violation of TEX. FIN. CODE § 392.304(a)(19), Defendant used false representations and deceptive means to collect a consumer debt.

17. Under TEX. FIN. CODE ANN. § 392.403, the Defendant's violations of the TDCA render it liable to Plaintiff for actual damages, statutory damages, injunctive relief, declaratory relief, costs, and reasonable attorney's fees.

### **Third Claim for Relief**

18. The Plaintiff repeats, realleges and incorporates by reference the foregoing paragraphs.

- a. Pursuant to TEX. FIN. CODE ANN. § 392.404, the Defendant's violations of the TDCA also constitute a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code ("DTPA"), and is actionable under that subchapter.

19. Under TEX. BUS. & COM. CODE ANN. § 17.50(b)(2), the Defendant's violations of the DTPA render it liable to Plaintiff for injunctive relief, and reasonable attorney's fees. Specifically,

Plaintiff seeks to enjoin Defendant from suing her on debts in any forum that is not the judicial district in which she resided at the commencement of the litigation or signed the agreement which forms the basis of the debt.

**Prayer for Relief**

WHEREFORE, the Plaintiff prays that this Court:

1. Declare that Defendant's actions violate the FDCPA, the TDCA and the DPTA.
2. Enjoin the Defendant's actions which violate the TDCA and the DTPA.
3. Enter judgment in favor of Plaintiff and against Defendant for actual damages, statutory damages, costs, and reasonable attorneys' fees as provided by 15 U.S.C. § 1692k(a) and/or Tex. Fin. Code Ann. § 392.403 and/or Tex. Bus. & Com. Code § 17.50(d).
4. Grant such further relief as deemed just.

Respectfully submitted,



Jerry J. Jarzombek  
Texas Bar No. 10589050

301 Commerce Street, Suite 2900  
Fort Worth, Texas 76102  
817-348-8325  
817-348-8328 Facsimile

ATTORNEY FOR PLAINTIFF

**DEMAND FOR JURY TRIAL**

Plaintiff demands trial by jury in this action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jerry J. Jarzombek", is written over a horizontal line.

Jerry J. Jarzombek  
Texas Bar No. 10589050

301 Commerce Street, Suite 2900  
Fort Worth, Texas 76102  
817-348-8325  
817-348-8328 Facsimile

ATTORNEY FOR PLAINTIFF

APR 24 2018

CLERK U.S. DISTRICT COURT

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Cynthia Bacy

**DEFENDANTS**

Midland Funding, LLC

(b) County of Residence of First Listed Plaintiff Tarrant

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jerry J. Jarzombek; The Law Office of Jerry Jarzombek, PLLC;  
301 Commerce Street, Suite 2900; Fort Worth, TX 76102; 817-348-8325

4-18 CV-310-A

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 1692 et seq.

Brief description of cause:

Unlawful debt collection

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

1,000.00 +

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/24/2018

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

*[Signature]*

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE